



This Recommended Order and Decision became the Order and Decision of the  
Illinois Human Rights Commission on 2/14/03.

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
KEITH D. PERRY,	)	
	)	
Complainant,	)	
	)	Charge No.: 1994CF2517
and	)	EEOC No.: 21B941836
	)	ALS No.: 8650
PIERCE CHEMICAL COMPANY,	)	
	)	
	)	
Respondent.	)	

**RECOMMENDED ORDER AND DECISION**

On February 15, 1995, Complainant, Keith D. Perry, filed a complaint on his own behalf against Respondent, Pierce Chemical Company. That complaint alleged that Respondent discriminated against Complainant on the basis of his race when it failed to promote him. The complaint further alleged that Respondent unlawfully retaliated against Complainant when he complained of race discrimination.

This matter now comes on to be heard on Respondent's Motion to Lift Stay and Enter Judgment for Respondent. The stay was lifted on August 15, 2002. The August 15 order, which was served upon Complainant, also gave Complainant's attorney leave to withdraw. In addition, August 15 order gave Complainant until September 6, 2002 to file a *pro se* appearance or to have other counsel file an appearance on his behalf and gave Complainant

until September 27, 2002 to file a written response to Respondent's motion for judgment in its favor.

No such response has been filed, and the time for filing such a response has passed. Moreover, no attorney has entered an appearance on Complainant's behalf and Complainant has failed to file a *pro se* appearance. This matter is now ready for decision.

#### FINDINGS OF FACT

The following facts were derived from the record file in this case.

1. This matter was stayed for a period of time to allow Complainant to pursue his claim in federal court.

2. On May 14, 2002, the U. S. District Court granted summary judgment in favor of Respondent.

3. Complainant has not appealed the federal court's decision.

#### CONCLUSIONS OF LAW

1. Summary judgment is a decision on the merits.

2. On the basis of the doctrine of *res judicata*, this case should be dismissed with prejudice.

#### DISCUSSION

On July 20, 2000, pursuant to Complainant's motion, this matter was stayed to allow Complainant to pursue his claim in federal court. The federal case was based upon the same initial charge of discrimination, which spawned this case.

On May 14, 2002, the U. S. District Court granted summary

judgment in favor of Respondent. That summary decision ended the federal litigation. Complainant has not appealed the federal court's decision. Subsequently, Respondent filed a motion seeking to dismiss this case on the basis of *res judicata*.

The doctrine of *res judicata* applies if three elements are met: 1) the parties in the present action must be the same parties, or in privity with the same parties, as the ones in the prior action, 2) the cause of action must be the same as the one in the prior action, and 3) a decision on the merits must have been entered in the prior action. ***Housing Authority for LaSalle County v. Young Men's Christian Assoc. of Ottawa***, 101 Ill. 2d 246, 461 N.E.2d 959 (1984). Those elements have been met in this case.

Certainly, the parties are the same as in the federal action. In addition, there is no doubt that the causes of action are identical. Two claims comprise the same cause of action if they arise from the same set of facts. ***Smith v. City of Chicago***, 820 F.2d 916 (7th Cir. 1987). Both the Commission case and the federal case were based upon the same initial charge of discrimination. Clearly, then, they are based upon the same set of facts.

Finally, there is no doubt that there was a decision on the merits in the federal action. The federal court entered a summary judgment in favor of Respondent. When a motion for summary judgment is granted, that action constitutes a decision

on the merits. **Webster and Spraying Systems Co.**, \_\_\_ Ill. HRC Rep. \_\_\_, (1985CF1738, July 26, 1991).

In sum, the dispute in this case has already been decided by the federal court. As a result, this case should be dismissed.

RECOMMENDATION

Based upon the foregoing, Complainant's claim against Respondent is barred pursuant to the doctrine of *res judicata*. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: December 19, 2002